

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 21 OF 2013

BETWEEN : STATE

AND : A.B.

Counsel : Mr. J. Niudamu for State  
Mr. Iqbal Khan for the Accused

Date of Hearing : 17th of August 2016, 15th and 17th of November  
2016

Date of Closing Submissions : 17th of November 2016

Date of Summing Up : 21st of November 2016

Date of Judgment : 22nd of November 2016

Date of Sentence : 25th of November 2016

SENTENCE

1. The name of the victim and the Accused are suppressed.
2. You are found guilty and convicted accordingly by this court for one count of Rape contrary to Section 207 (1) (2) (a) of the Crimes Decree which carries a maximum penalty of life imprisonment.
3. It was proved at the conclusion of the hearing, that you forcefully had a sexual intercourse with the victim on the 26th of January 2013. You are the step father of

the victim. You asked her to come and press your back in the early morning of the 26th of January 2013. Her mother and other siblings had gone to the flea market and she was alone with you at home. After she massages your back, she tried to go out of the room. At that time, you stopped her and had started to kiss her. You had then dragged her to the bed and had sexual intercourse with her without her consent.

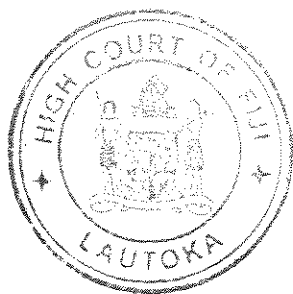
4. This is a case of sexually exploitation of a young girl by a known family member within her own domestic environment. She is your step-daughter. The victim has considered you as a father figure at the house. The family environment is the most protective and appropriate environment for a young girl to grow up with confidence and safety. Close family members and relatives are the most trusted and dependable people of any person's life. Therefore, sexually assaulting a young girl within her own family environment by a known family member is one of the outrageous forms of sexual crime.
5. In view of the seriousness of these offence, it is my opinion that such offenders must be dealt with severe and harsh punishment. Hence, the purpose of this sentence is founded on the principle of deterrence and protection of community. Moreover, the court must demonstrate in sentencing that the offenders of this nature are socially abhorrent.
6. The tariff for the offence of rape involving an adult victim ranges from seven (7) years to fifteen (15) years of imprisonment period.
7. It was proved at the conclusion of the hearing that you have unleashed these disgraceful sexual exploitation on the victim when she was not in a position to

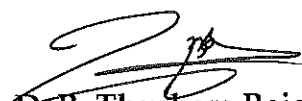
seek any assistance or find a way to escape. She was alone at home in the early morning with you while her mother and other siblings had gone to the flea market. You came out of your room and confirmed that no one was at home. You then went and locked the front door and called the victim into your room. Hence, it appears that you found an opportunity and then planned to commit this crime when the victim was vulnerable without any prospects of escaping. Hence, I find the degree of culpability in these offending is substantially high.

8. Having considered the seriousness of the offence, the purpose of the sentencing, the level of harm and the degree of culpability, I select eleven (11) years as the starting point.
9. You have blatantly breached the trust reposed in you by the victim as her Step-Father. Being the Step-Father of the victim, it was your duty and responsibility to provide the victim necessary protection and care with love and affection. By committing this crime, you have ignored to fulfill such duties and responsibilities. I consider these factors as aggravating circumstance of this crime.
10. The learned counsel for the defence submitted in mitigation about your family and personal circumstances. However, the family background of the offenders of this nature has very minimal mitigatory value.
11. You are a first offender. Therefore, it is appropriate to give you some substantial discount for your good character. You are now thirty five (35) years old.

12. You were not remanded in custody prior to the hearing of this case. Therefore, you are not entitled for a deduction pursuant to Section 24 of the Sentencing and Penalties Decree.
13. In view of the above discussed aggravating circumstances, I increased two (2) years to reach interim imprisonment of thirteen (13) years. Having considered your good character and relatively young age, I reduce three (3) years. Your final sentence has now reached to ten (10) years of imprisonment.
14. Having considered your age and opportunities for rehabilitation, I find seven years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of seven years pursuant to Section 18 (1) of the Sentencing and Penalties Decree.
15. Accordingly, I sentence you for a period of ten (10) years of imprisonment for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. Moreover, you are not eligible for any parole for a period of seven (7) years.
16. Since this incident involves with domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Decree. I accordingly make a permanent domestic violence restraining order against the accused with standard non molestation conditions and no contact conditions pursuant to section 24 and 28 of the Domestic Violence Decree. The above domestic violence restraining order will be in force until this court or any other competence court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of section 77 of the Domestic Violence Decree.

17. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D. R. Thushara Rajasinghe  
Judge

At Lautoka  
25<sup>th</sup> November, 2016

Solicitors : Office of Director of Public Prosecution  
Messrs Iqbal Khan & Associates